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11 UNITED STATES DISTRICT COURT  
12 NORTHERN DISTRICT OF CALIFORNIA  
13 SAN FRANCISCO DIVISION

14 UNITED STATES OF AMERICA, ) No.: CR 07-0742 EDL  
15 Plaintiff, )  
16 v. ) UNITED STATES' STATEMENT RE  
17 DAMIEN SEXTON, ) DEFENDANT'S APPLICATION FOR  
18 Defendant. ) PRETRIAL RULE 17 SUBPOENA DUCES  
19 \_\_\_\_\_ ) TECUM  
Date: April 1, 2008  
Time: 10:30 a.m.  
The Honorable Elizabeth D. Laporte

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21 The United States hereby files a statement noting objections to the terms of the Rule 17(c)  
22 subpoena *duces tecum* sought by defendant in his *ex parte* application of March 19, 2008. In the  
23 subpoena application, defendant seeks the passenger manifest of United Air Lines' March 21,  
24 2007 flight #189, the flight during which the crimes alleged in this case occurred. The  
25 government's principal objections to this application are that it is overbroad and that it  
26 insufficiently protects the personal contact information of the passengers on the flight.

27 As defendant acknowledges in his application, Rule 17(c) was not intended to provide a  
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1 means of discovery for criminal defendants. Instead, the rule acts to expedite trial by providing a  
2 time and place before trial for the inspection of subpoenaed materials. *United States v. Nixon*,  
3 418 U.S. 683, 698–99 (1974). Before a subpoena can be issued pursuant to Rule 17(c), a party  
4 must demonstrate to the district court that the requested documents are relevant, specifically  
5 described, and admissible as evidence. *Id.* at 700.

6 It is not immediately clear to the government how the passenger manifest list itself would  
7 be relevant to any of the charges alleged in the information. Nevertheless, the government  
8 understands that defendant seeks the list in order to identify witnesses whose testimony about  
9 defendant's behavior on the relevant flight might differ materially from that of the witnesses  
10 whom the government has interviewed and, thus, assist in his defense to the charges.  
11 Understanding the request in that light, the government does not object to defendant's need for  
12 the information.

13 The request does, however, appear to be overbroad. The government alleges in this case  
14 that defendant made verbal threats on this flight that frightened other passengers. Witnesses  
15 interviewed by the government have stated that, during the flight, defendant uttered threats such  
16 as “I’m going to kill the pilot,” “I will kill you all,” and “I’m getting off this plane.” The police  
17 report indicates that defendant was seated in row 18 of the airplane. Even if defendant were  
18 yelling these threats, it seems very unlikely that any passengers on the flight could hear them  
19 other than passengers sitting in the rows immediately surrounding defendant. In order to ensure  
20 that the subpoena is not overbroad, the government suggests that this Court modify the request to  
21 be limited to passengers in rows 15-21 of the aircraft, which would allow defense counsel access  
22 to the information of passengers seated three rows ahead of and behind defendant on the flight.

23 Further, as detailed in the stipulation the government drafted with regard to the proposed  
24 protective order, at least one passenger on that flight has expressed fear that the defendant may  
25 contact him or her directly. In light of the nature of the allegations in this case, it is reasonable to  
26 assume that other passengers may have similar concerns. The government, therefore, requests,  
27 that any passenger contact information received from the airline be subject to the terms of the  
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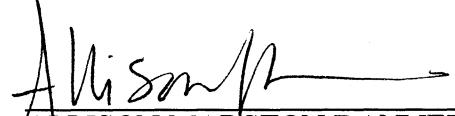
1 protective order that this Court has already issued with regard to the contact information for  
2 witnesses interviewed by the government.

3 Finally, the terms of Rule 17(c) allow information secured pursuant to this provision to be  
4 produced to the court in the first instance. *See* Fed. R. Crim. P. 17(c)(1) (stating “[t]he court may  
5 direct the witness to produce the designated items in court” and then allow for inspection by the  
6 parties). In light of the concerns expressed above, the government suggests that this Court follow  
7 this procedure for the requested information.

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9 DATED: March 21, 2008

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11 Respectfully submitted,

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13 JOSEPH P. RUSSONIELLO  
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16 ALLISON MARSTON DANNER  
17 Assistant U.S. Attorney